MICHIGAN LAW REVIEW

PUBLISHED MONTHLY DURING THE ACADEMIC YEAR, EXCLUSIVE OF OCTOBER, BY THE

LAW FACULTY OF THE UNIVERSITY OF MICHIGAN

SUBSCRIPTION PRICE, $2.50 PER YEAR. 35 CENTS PER NUMBER

NOTE AND COMMENT

WHAT IS THE PRACTICE OF MEDICINE?—This question was quite fully considered in 4 MICHIGAN LAW REVIEW, pp. 373-379, and many of the cases bearing upon the subject that had been decided at the time of the writing of the note were therein collected and reviewed. The case of *State* v. *Wilhite,* decided by the Supreme Court of Iowa, November 14, 1906, bears upon this subject, and is, perhaps, of sufficient importance to merit a brief reference.

The defendant was charged with practicing medicine without a license from the proper state authorities. He was convicted in the trial court, and upon appeal to the Supreme Court of the state, claimed, among other defenses, that the acts charged did not constitute the practice of medicine as defined by the statute, which provided that "any person shall be held as practicing medicine, surgery or obstetrics, or to be a physician within the meaning of this chapter, who shall publicly profess to be a physician, surgeon or obstetrician, and assume the duties, or who shall make a practice of prescribing or of prescribing and furnishing medicine for the sick, or who shall publicly profess to cure or heal." The defendant advertised himself as "Dr. Wilhite, Neurologist," but he denied practicing medicine in the ordinary sense of that term, and claimed that nature did the healing of the disease, he

simply discovering by his system the cause of disease and removing it, thus giving nature a chance. "To accomplish this," says the court, "he proposed to 'stop the leaks in the nervous system and repair the damages done, by methodical rest and dietetics.' In a long creed, criticising the treatment of disease by physicians generally, published in a local paper, he announced himself 'the master mechanic of the human body,' and added: 'The system I practice is taught in but one school in the world, and I am a graduate of that school,' and proceeded: 'If your organs are not working properly, call on a master mechanic who will remove the cause. If there is a leak of power, he stops it. If there is pressure on some of the shaftings (or nerves), causing a hot box (or pain), he removes it. If the right fuel has not been used, he orders the right kind, and if the fireman does not know how to fire, he teaches him or her the business.'" This published statement was signed "Dr. J. C. Wilhite, 526½ Central Avenue, Fort Dodge, Iowa."

The court held that the defendant was a practitioner of medicine, within the meaning of the statute, first because of his public profession of ability and readiness to heal and cure, and secondly because of his advice to patients as to how to care for themselves so that nature might effect a cure. The decision was based upon *State* v. *Heath,* 125 Iowa, 585, 101 N. W. Rep. 429, and *State* v. *Edmunds,* 127 Iowa, 333, 101 N. W. Rep. 431. In the former the court construed that part of the medical act above quoted, and held that it was the evident intention of the legislature to divide those who should be deemed to be practicing medicine into three classes, the first embracing all those who profess to be physicians and assume the duties; the second, those who make a practice of prescribing, or prescribing and furnishing medicine for the sick; and third, those who publicly profess to cure or heal. In speaking of those embraced within the last class, the court said: "It is doubtless true that a mere public profession of an ability to heal would not subject anyone to the penalties of the law. Such profession must be made under such circumstances as to indicate that it is made with a view of undertaking to cure the afflicted. * * * There is some reason for not exacting proof of actual treatment in all cases. Should one profess to be a physician, and assume the duties, or prescribe for the sick, little difficulty might be experienced in obtaining evidence of the fact. But suppose a charlatan, quack or other person assumes or pretends to believe he may effect cures in an invisible manner, and undertakes to do so? Proof of his effort would be all but impossible. The statute, in order to be effective, has denounced the public profession that he will cure or heal, and this may be proven without exacting evidence that he has actually undertaken to do so."

The case under review clearly falls within the principles of *State* v. *Heath.* That the defendant publicly professed an ability to heal with a view of attracting patients and undertaking their cure, is clearly apparent. The Iowa statute is fortunately comprehensive in its terms, and reaches ignorant and designing pretenders in a way that the medical acts of some other states have failed to do.

In answer to appellant's rather unusual contention that there were others equally guilty with himself, many of whom were enumerated, the court said:

"It will be time enough to determine each case when it reaches us, and should some escape, it may afford the accused some consolation to reflect that also at the fall of the tower of Siloam those who escaped were quite as great sinners as the eighteen who were crushed beneath its walls." H. B. H.

A HOME RULE CHARTER AND THE CONSTITUTION.—A very essential requisite to the successful government of large cities is that they be allowed considerable latitude in adapting the general system of municipal government to the needs peculiar to their own conditions. That form of government suited to cities under, for instance, fifty thousand population would be entirely inadequate and unsuited to one of half a million. In order to secure to those larger cities the greatest amount of freedom of home rule and still keep within constitutional bounds many schemes have been tried. In 1901 the people of Colorado tried it in the following manner: A constitutional amendment, known as Article 20, was adopted providing, among other things, that the City of Denver and the County of Arapahoe should be from thenceforth consolidated into one body, to be known as the City and County of Denver (Sec. 1); that a charter convention be called to frame a charter for the government of such city and county (Sec. 4); and that such charter should be amended, altered, and repealed, solely by the people of the City and County of Denver (Sec. 5). The amendment and charter were both duly adopted in the manner prescribed by law. In the charter it was provided that there should be elected two county judges, and, pursuant to this, an election was held at which one Johnson and another were elected to fill the offices of county judges. Both had entered upon the performance of their duties when quo warranto proceedings were instituted against Johnson, on the ground that the state constitution provided for one judge for every district unless otherwise provided by law, and that therefore the charter provision increasing the number to two was void. The Supreme Court of Colorado, STEELE and GUNTHER, JJ., dissenting, held that the respondent was holding the office of judge without lawful authority, and so gave judgment of ouster. *People ex rel. Miller, Atty. Gen.* v. *Johnson* (1905), — Colo. —, 86 Pac. 233.

The opinion of Mr. JUSTICE MAXWELL, speaking for the majority of the court, indicates that in their opinion, the question in the case was settled by the same court in *People* v. *Sours,* 31 Colo. 369, 74 Pac. 167, 102 Am. St. Rep. 34; going so far, in fact, as to say that it could be disposed of upon that ground alone, but apparently by way of fortifying their view, satisfactory reason for the decision was found in that the charter provision in question violated that provision of the Constitution of the United States (Art. 4, Sec. 4) relating to guaranteeing a republican form of government to each state. Since such complete reliance was put upon the decision in the *Sours* case, it is fitting that we determine just what was decided thereby.

It seems that it was a proceeding in mandamus instituted by the treasurer of Arapahoe County to compel the treasurer of the City of Denver to turn over to him the moneys, books, etc., belonging to him as treasurer of the city, the action being based on the ground that upon the issuance of the governor's proclamation, he, the treasurer of the county, had by virtue of the